

**ITEM #1**  
**FINAL STAFF ANALYSIS – SEPTEMBER 3, 1999**  
**PROPOSED PARAMETERS AND GUIDELINES**

Education Code Sections 56026, subdivision (c)(4), 56171, subdivision (a), 56190,  
56191, 56192, 56194, 56321, 56325, subdivision (b), 56346, 56362,  
subdivisions (c), (d), (e), and (f), and 56363.3

Statutes of 1980, Chapters 797, 1329, and 1353; Statutes of 1981, Chapters 972, 1044, and 1094;  
Statutes of 1982, Chapter 1201; Statutes of 1987, Chapters 311 and 1452; Statutes of 1988,  
Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapter 1361; Statutes of 1993,  
Chapter 1296; Statutes of 1994, Chapter 1288; and Statutes of 1995, Chapter 530

Title 5, California Code of Regulations, Sections 3043, subdivision (d), and 3067

*Special Education*

*Community Advisory Committees; Governance Structure; Enrollment Caseloads;  
Extended School Year; Resource Specialist Program (excluding maximum caseloads); Maximum  
Age Limit – Age 22; Interim Placements; and Written Consent.*

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**STAFF’S EXECUTIVE SUMMARY**

**Background**

The Education for All Handicapped Children Act (Act) of 1975 is the backbone of the federal statutory provisions governing special education. The Act begins with express findings that the special education needs of children with disabilities are not being fully met. Thus, the express purpose of the Act is to assist state and local educational efforts in order to assure equal protection of the law and to assure that children with disabilities have available special education and related services designed to meet their unique needs. In response to the Act, the California Legislature enacted numerous provisions of the Education Code to provide special education and related services for disabled children.

On October 31, 1980, the Santa Barbara County Superintendent of Schools (Santa Barbara) filed a test claim with the Board of Control (Board). Santa Barbara sought reimbursement for costs incurred in the 1979-80 fiscal year to provide special education services as required by Statutes of 1977, Chapter 1247 (Chapter 1247/77) and Statutes of 1980, Chapter 797 (Chapter 797/80).

The Board denied Santa Barbara’s claim, concluding that while the Act resulted in costs mandated by the federal government and that state special education requirements exceeded those of federal law, “the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act.” Santa Barbara sought judicial review. The superior court found the administrative record and the Board’s findings inadequate. The court ordered the Board to set aside its

decision, rehear the matter, and establish a proper record with findings in support of its decision. The judgment was not appealed.

On October 30, 1981, Riverside County Superintendent of Schools (Riverside) filed a test claim for costs incurred to provide special education in the 1980-81 fiscal year. The Board denied Riverside's claim for the same reasons that the Santa Barbara claim was denied. Riverside also sought judicial review. In its decision, the superior court accepted the Board's conclusions that the Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the Board that any appropriation in the state budget act necessarily satisfies the state's subvention obligation. The court concluded that the Board failed to consider whether the state had fully reimbursed local districts for the state-mandated costs that were in excess of the federal mandate and remanded the matter for consideration of that question. This judgment was not appealed.

On remand, the Board adopted a decision holding that all special education costs under Chapters 1247/77 and 797/80 are state-mandated costs subject to subvention. The Board reasoned that the Federal Act is a discretionary program and that section 504 of the Federal Rehabilitation Act does not require school districts to implement any programs in response to federal law. Accordingly, the Board concluded that special education programs are optional in the absence of a state mandate.

The Director of the Department of Finance (DOF) brought an action to set aside the decision of the Board. The superior court concluded that the Board did not apply the appropriate standard in determining whether any portions of local special education costs were incurred pursuant to a federal mandate. Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates (Commission), the successor to the Board, to set aside the Board's decision and to reconsider the claims "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." The judgment was appealed under the name of the Director of Finance, Thomas William Hayes.

On appeal, the *Hayes* Court determined that, under the criteria established in *City of Sacramento v. State of California*<sup>1</sup>, the 1975 amendments to the Act imposed a federal mandate upon the State of California. The *Hayes* court concluded "[t]o the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local districts, the costs of such programs or higher levels of service are state mandated and subject to subvention." In light of this conclusion, the *Hayes* court directed the Commission to focus on the costs incurred by local school districts and whether those costs were imposed by a federal mandate or by the state's voluntary choice in its implementation of the federal program.

### **Summary of the Mandate**

On November 30, 1998, the Commission determined that the test claim legislation constituted a partial reimbursable state mandated program within the meaning of section 6 of article XIII B of the California Constitution for the following eight program areas: (1) Maximum Age Limit; (2) Community Advisory Committee; (3) Governance Structure; (4) Enrollment Caseloads (both Resource Specialists and Language, Speech, and Hearing Specialists); (5) Extended School

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<sup>1</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

Year; (6) Interim Placements; (7) Resource Specialist Program (excluding maximum caseloads); and (8) Written Parental Consent.

On January 11, 1999, the claimants submitted their Proposed Parameters and Guidelines. DOF and interested parties filed comments. On June 23, 1999, the claimants submitted their Rebuttal and Amended Parameters and Guidelines upon which staff based its Draft Staff Analysis. On July 26, 1999, DOF submitted its comments on the Draft Staff Analysis and claimants' June 23, 1999, submittal. On August 13, 1999, the claimants submitted their comments on the Draft Staff Analysis and DOF's July 26, 1999, submittal. On August 25, 1999, staff released its Final Analysis. On August 31, 1999, the claimants and DOF submitted their comments on the Final Analysis.

### **Issues Before the Commission**

There are two legal issues before the Commission.

#### **1. SHOULD THE COMMISSION ON STATE MANDATES ADOPT OFFSET LANGUAGE IN THE SPECIAL EDUCATION PARAMETERS AND GUIDELINES?**

During the hearings and in its submittals for the Proposed Statement of Decision, DOF asserted that offsetting savings existed for the eight reimbursable state mandated programs. At the November 30, 1998, hearing, the Commission deferred discussion of the offset issue to the Parameters and Guidelines phase.

Government Code section 17556, subdivision (e), sets forth two tests for determining whether the Commission shall find that there are no costs mandated by the state. The first test provides that the Commission shall find there are no costs mandated by the state if the statute or executive order provides for *offsetting savings* that result in *no net costs*. The second test provides that the Commission shall find there are no costs mandated by the state if the statute or executive order includes additional revenue *specifically intended* to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. In addition, Title 2, California Code of Regulations, section 1183.1, provides that "all proposed Parameters and Guidelines must allow for an offset of any reimbursement received from the federal or state governments or other non-local sources."

Staff concludes that DOF oversimplifies the application of section 17556, subdivision (e), by concluding that if *any* funding has been provided for the eight programs these programs are ineligible for reimbursement. The fact an agency or school district has received funding is only the beginning of the analysis. The Commission must then determine if either of the two tests of section 17556, subdivision (e), apply.

##### **(A) Does the Statute or Executive Order Provide for Offsetting Savings that Result in No Net Costs?**

Under the first test of Government Code section 17556, subdivision (e), the Commission shall not find costs mandated by the state if the statute or executive order provides for *offsetting savings which result in no net costs* to local agencies or school districts.

DOF does not specifically contend that the test claim legislation provides for offsetting savings that result in no net costs to the claimants. Staff notes that Education Code section 56826 provides that: "funds apportioned to districts, special education local plan areas, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part." However, staff concludes that there is nothing in this section or any other provision of the

test claim legislation that specifically provides for *offsetting savings which result in no net costs* to the claimants.

Accordingly, staff concludes that there is no evidence that the test claim legislation provides for *offsetting savings which result in no net costs* to the claimants. However, the analysis must continue to determine whether the second test of section 17556, subdivision (e), applies.

(B) Does the Statute or Executive Order Include Additional Revenue Specifically Intended to Fund the Costs of the State Mandate in an Amount Sufficient to Fund the Cost of the State Mandate?

The second test provides that the Commission shall not find costs mandated by the state if the statute or executive order includes additional revenue *specifically intended* to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate.

DOF contends that the Commission must credit the state for all funds that the state has already made available for these programs. Moreover, DOF asserts that the state has more than paid for the eight program areas and therefore, school districts have not incurred any net costs. DOF further contends that the eight programs must be credited or offset by the proportionate share of funding that has already been contributed to special education, a concept DOF refers to as “Proportionate Offset.”

The claimants agree that the state has provided substantial funding for special education. However, the claimants contend that under the second test of section 17556, subdivision (e), funds must be specifically intended to fund a particular mandate in an amount sufficient to fund the cost of the state mandate. The claimants acknowledge that the following program areas were specifically funded, at least partially, under the Education Code: (1) Community Advisory Committees; (2) Governance Structure; (3) Extended School Year; and (4) Resource Specialists (including aides and enrollment caseloads). However, the claimants assert that none of the preceding programs were funded in an amount sufficient to fund the cost of the state mandate.

Even if the Commission accepts DOF’s argument that school districts must first allocate state funds for the eight programs, a program-by-program analysis must be done to determine which programs received funding specifically intended to fund the mandate in an amount sufficient to fund the cost of the state mandate. The claimants did such an analysis in Attachment 7 in their June 23, 1999, Rebuttal to Responses to Proposed Parameters and Guidelines.<sup>2</sup>

Therefore, based on the program-by-program analysis provided by the claimants, staff finds that although the state has provided substantial funding for special education, only the four programs identified above received funding *specifically intended* to fund the costs of the state mandate. Moreover, staff finds that these program areas were not funded in an amount sufficient to fund the entire cost of the state mandate. Thus, in accordance with the Commission’s regulations, staff’s Proposed Parameters and Guidelines include specific language addressing the offsets for these program areas. It is staff’s position that DOF’s concerns regarding “Proportionate Offset” will be addressed with the inclusion of these offset provisions.

Based on the arguments presented above, the Commission may adopt one of the following findings concerning the application of offsets:

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<sup>2</sup> See claimants’ June 23, 1999, submittal. (Volume III, Bates Page 1123.)

**OPTION 1:** The Commission finds that only four program areas received revenue specifically intended to fund the costs of those program areas. However, the Commission finds that these programs were not funded in an amount sufficient to fund the entire cost of the state mandate. Accordingly, the Parameters and Guidelines must include language to explain that additional revenue specifically intended to fund the cost of the state mandates shall be deducted from the costs claimed.

If the Commission adopts **OPTION 1**, the Commission will continue to hear and decide the Uniform Cost Rate issue below.

**OPTION 2:** The Commission finds that the state has provided additional revenue specifically intended to fund the eight program areas in an amount sufficient to fund the cost of these programs. Therefore, the claimants are not entitled to reimbursement.

If the Commission adopts DOF's **OPTION 2**, the hearing is over and the Commission need not hear the Uniform Cost Rate issue since it will have found that the eight program areas are fully funded.

**OPTION 3:** The Commission finds that the Special Education program, including the eight state-mandated components found by the Commission, was generally funded from a mixture of state, federal, and local funds. The Commission therefore finds that the State is entitled to offsets for those eight components in an amount proportionate to the State's contribution to funding of the overall Special Education program, and that the State is further entitled to offset any additional state funding that was directed to individual component activities. Accordingly, the Commission shall conduct further proceedings to determine the State's proportionate contribution to overall funding of the program, and the Parameters and Guidelines must include language to explain that such offsetting revenues shall be deducted from the costs claimed.

If the Commission adopts DOF's **OPTION 3**, the Commission will continue to hear and decide the Uniform Cost Rate issue below. However, the Commission will need to schedule additional hearings to determine the proportionate contribution to overall funding of the Special Education Program.

#### **Staff Recommendation**

Staff recommends that the Commission adopt **OPTION 1**.

#### **2. SHOULD THE COMMISSION ON STATE MANDATES INCLUDE UNIFORM COST RATES IN THE SPECIAL EDUCATION PARAMETERS AND GUIDELINES?**

DOF's amendments to the claimants' Proposed Parameters and Guidelines would delete all references to uniform allowances and insert very detailed requirements for claiming costs. DOF asserts that its detailed requirements are necessary because there is a potential for the state to pay out "significant sums of money without requiring actual documentation of costs having been incurred."

Staff disagrees with DOF's deletion of uniform cost rates for three reasons.

First, the Commission's statutes and regulations allow, and indeed, encourage the Commission's use of uniform allowances. Government Code section 17557, subdivision (b), uses the phrase

“may adopt” uniform allowances, while the regulations state that uniform allowances should be used *whenever possible*. Contrary to DOF’s assertion, claimants *may*, and pursuant to the Commission’s regulations, *should* include whenever possible, uniform allowances when submitting their Proposed Parameters and Guidelines. Accordingly, staff finds that the Commission’s statutes and regulations encourage, whenever possible, the use of allocation formulas or uniform allowances as the basis for reimbursement.

Second, most, if not all, claimants would be unable to produce specific documentation for fiscal years 1980-81 through 1996-97. The claimants contend that, under the Department of Education’s regulations, school districts are *not* required to keep such detailed documentation for more than three years in most circumstances. The claimants state: “The retention and destruction of school districts records is governed by the provisions of Title 5, section 16020, et. seq., California Code of Regulations. . . . Under these regulations, the district superintendent must review documents and papers originating during the prior school year and classify them in one of three categories: Class 1, Class 2, or Class 3.” The claimants contend that “most documents relevant to this test claim are Class 3, records, subject to destruction within 3 years of the year of origin.” However, the regulations allow school districts to determine whether certain records are worthy of preservation and therefore, should be retained.

Staff agrees with DOF’s contention that “school districts were well aware of the pendency of this Special Education claim and related court litigation, and should have retained records accordingly.” However, the discretionary activity of determining what records are worthy of retention does not become mandatory simply because there is a pending test claim and accompanying litigation. While school districts *should* have retained such documentation, state law did not, and does not, require them to do so. It is staff’s position that the fact that most school districts did not retain such records does not preclude the Commission from adopting uniform cost rates for any or all of the eight program areas. Therefore, staff finds that DOF’s proposal to delete uniform cost rates and require specific documentation, which the school districts would not retain in the normal course of business pursuant to state law, would prevent most claimants from being reimbursed for costs mandated by the state.

Third, DOF’s alternative language requiring specific documentation is unnecessarily burdensome and costly. DOF strikes out all of the uniform cost allowance sections from the claimants Proposed Parameters and Guidelines and replaces them with two new sections – “Eligibility Requirements” and “Reimbursement Computations.” The Eligibility Requirements section requires school districts to provide specified information in order to be eligible for reimbursement. The Reimbursement Computations section includes detailed instructions on how costs are to be computed and claimed. Staff finds inclusion of DOF’s proposed sections would expand the activities required by school districts filing reimbursement claims. In some instances, the costs of complying with DOF’s new sections could significantly increase the costs of the program itself. Accordingly, staff finds that including uniform cost rates in the Parameters and Guidelines is consistent with the Commission’s statutes and regulations. In addition, while DOF’s proposal would provide a more accurate representation of the actual costs school districts incurred when compared to using uniform cost rates, this proposal would dramatically increase school districts’ reimbursement claims under the Mandate Reimbursement Process.

Based on the arguments presented above, the Commission may adopt one of the following findings concerning the application of uniform cost rates:

**OPTION 1:** The Commission finds that the use of Uniform Cost Rates in the Special Education Parameters and Guidelines is consistent with the Commission's statutes and regulations.

If the Commission adopts **OPTION 1**, the Commission must determine if the Uniform Time/Cost Allowances in staff's or the claimants' Proposed Parameters and Guidelines are reasonable and should be adopted as proposed or modified, in whole or in part. These determinations may be made at the September 15, 1999, hearing, or continued to the September 30, 1999, hearing. After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission.

**OPTION 2:** The Commission finds that Uniform Cost Rates do not provide the level of detail necessary to ensure that the state is paying the proper amount for the eight program areas. Therefore, this claim requires the use of actual documentation and striking of all references to averages, uniform allowances, and time studies from the Special Education Parameters and Guidelines.

If the Commission adopts DOF's **OPTION 2**, the Commission must decide which version to adopt as proposed or modified, in whole or in part. These determinations may be made at the September 15, 1999, hearing, or continued to the September 30, 1999, hearing. After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission.

**Staff Recommendation:**

Staff recommends that the Commission adopt **OPTION 1**.

If the Commission adopts **OPTION 1**, then the Commission may adopt either staff's Proposed Parameters and Guidelines (**Exhibit A**), the Claimants' Last Submittal (**Exhibit B**), or a modified version of the Proposed Parameters and Guidelines to be developed at the hearing.

If the Commission adopts DOF's **OPTION 2**, then the Commission may adopt the Claimants' Last Submittal (Modified), without uniform cost rates, (**Exhibit C**), DOF's version of the Claimants' Proposed Parameters and Guidelines (**Exhibit D**), or a version of the Proposed Parameters and Guidelines to be developed at the hearing.

## **STAFF REPORT**

### **PART I – BACKGROUND**

#### **A. History and Overview of the Mandates Process**

##### **History**

The concept of state reimbursement to local agencies and school districts for state mandated activities originated with the Property Tax Relief Act of 1972 (Senate Bill 90; Statutes of 1972, Chapter 1406), also known as SB 90. The primary purpose of the Act was to limit the ability of local agencies and school districts to levy taxes. To offset these limitations, the Legislature declared its intent to reimburse local agencies and school districts for the costs of new programs or increased levels of service mandated by state government. The Legislature authorized the Board to hear and decide claims requesting reimbursement for costs mandated by the state.

In 1979, the voters approved Proposition 4, which superseded the SB 90 legislation and added Article XIII B to the California Constitution. Article XIII B imposed appropriation limits on the tax proceeds of both state and local governments. Section 6 of Article XIII B requires that whenever the Legislature or any state agency mandates a new program or higher level of service upon local government, the state must provide a subvention of funds to reimburse the associated costs, with certain exceptions.

To implement section 6, the Legislature enacted Government Code section 17500 et. seq. under Statutes of 1984, Chapter 1459, and created the Commission to succeed the Board. The Legislature formed the Commission to institute a more effective system for reimbursing local agencies and school districts for the costs of state-mandated programs. The Commission is a quasi-judicial body whose primary responsibility is to hear and decide test claims alleging that the Legislature or a state agency imposed a reimbursable state mandated program upon local agencies and school districts. Additionally, the Commission hears and decides claims alleging that the State Controller's Office (Controller) has incorrectly reduced payments to a local agency or school district.

The Commission membership consists of the Office of the State Controller, State Treasurer, Director of the Department of Finance, Director of the Office of Planning and Research, a public member with experience in public finance, and two local elected officials from the following three categories, with no more than one member from the same category: (1) a city council member; (2) a member of a county or city and county board of supervisors; or (3) a governing board member of a school district as defined in Section 17519. The public member and local elected officials are appointed by the Governor and approved by the Senate for renewable four-year terms.

##### **Overview of the Mandates Process**

###### **Enactment of a State Mandate**

In passing a law or enacting an executive order, the Legislature, the Governor, or a state agency may impose a new program or higher level of service upon local agencies or school districts. If such legislation or executive order does not fully fund the new program or increased level of service, affected local agencies and school districts may seek reimbursement by filing a test claim with the Commission.



### Test Claim

The first claim filed by a city, county, special district, or school district alleging that a particular statute or executive order imposes costs mandated by the state is a test claim. If more than one test claim is filed on the same statute or executive order, the claims may be consolidated so long as the claimants agree on all issues of the test claim. Before hearing a test claim, the Commission will provide all affected state agencies with an opportunity to submit comments on the test claim and allow the claimant time to file rebuttal comments.

After the comment period, the Commission's staff prepares a Draft Staff Analysis of the test claim. This Draft Staff Analysis is distributed to the claimant, state agencies, and interested parties for additional comment. After this second comment period, staff prepares the Final Analysis of the test claim. The Final Staff Analysis prepared for the Commissioners summarizes the test claim, the applicable law, the positions of the parties, and includes staff's analysis and recommendation on whether the claim should be approved or denied.

### Test Claim Hearing

At the public hearing on the test claim all parties and interested parties may testify before the Commission. If any of the following circumstances exist, the Commission shall find that there are no costs mandated by the state:<sup>3</sup>

- The program which is the subject of the test claim was implemented at the request of the claimant;
- The test claim statute or executive order has been declared, by court action, to be existing law;
- The test claim statute or executive order implemented a federal mandate unless it is found that the statute or executive order exceeds the scope of the federal mandate;
- The claimant has the authority to levy fees or assessments to pay for the mandated program;
- The test claim statute or executive order provides for offsetting savings which result in no net costs or includes additional revenue specifically intended to fund the mandate in an amount sufficient to fund the cost of the mandate;
- The test claim legislation or executive order imposes duties which were expressly contained in a state ballot measure approved by the voters; or
- The test claim legislation created a new crime or infraction, but only for the portion of the statute directly relating to enforcement of the crime or infraction.

After hearing and determining the test claim, the Commission adopts a Statement of Decision explaining the rationale for its conclusions. If the Commission determines that all or a portion of the test claim legislation imposes a reimbursable state mandated program, the next step is for the test claimant to develop Proposed Parameters and Guidelines.

### Parameters and Guidelines (Ps&Gs)

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<sup>3</sup> See Government Code section 17556.

If the Commission concludes that a test claim constitutes a reimbursable state mandated program, Commission staff informs the test claimant of its responsibility to prepare Proposed Ps&Gs. The Proposed Ps&Gs must contain the following information:

- A summary of the mandate that identifies the statute or executive order containing the mandate, activities found to be required under prior statute or executive order, and activities found to be required under the statute or executive order that contain the mandate or increased level of service.
- A description of the type and level of local governmental entities that are eligible to file for reimbursement.
- A description of the period of reimbursement specifying the first and subsequent fiscal years that can be reimbursed.
- A description of the specific costs and types of activities that are reimbursable, including one-time and on-going costs, and a description of the most reasonable methods of complying with the mandate. Costs should be calculated as follows:
  - Whenever possible, claimants should use an allocation formula or uniform allowance as the basis for reimbursement.
  - Proposed Ps&Gs must allow for an offset of any other reimbursement received from the federal or state governments or other non-local sources.
  - The guidelines must also allow for any offsetting savings in the same program experienced as a result of the same statute or executive order found to contain a mandate.
- Supporting data for the claim including reference to required source documents, record keeping, and allowable overhead costs.
- A signed section indicating that the person who will be submitting the reimbursement claim to the Office of the State Controller is so authorized.

Upon receipt of the claimant's Proposed Ps&Gs, Commission staff circulates the proposal to all affected state agencies and interested parties for review and comment. Using the claimant's proposal, and the comments submitted by affected state agencies and interested parties, the Commission's staff prepares Proposed Ps&Gs for presentation and adoption at a Commission hearing.

After a Commission hearing on the proposed Ps&Gs, the Commission may adopt, amend, or reject the claimant's Proposed Ps&Gs.

#### Claiming Instructions

Sixty days after the adoption of Ps&Gs, the Controller issues claiming instructions to assist local agencies and school districts in claiming reimbursable costs.<sup>4</sup>

In preparing claiming instructions, the Controller may request assistance from other state agencies. The instructions are derived from adopted Ps&Gs and the statute or executive order

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<sup>4</sup> If Ps&Gs are adopted on September 15, 1999, the Controller will issue claiming instructions on November 15, 1999.

creating the mandate. Issuance of the claiming instructions constitutes notice to local agencies and school districts of their right to file reimbursement claims based upon the adopted Ps&Gs.

#### Statewide Cost Estimate

Following adoption of Ps&Gs, Commission staff prepares an estimate of statewide costs. The Statewide Cost Estimate includes the total funds estimated to reimburse all eligible local agencies and school districts for costs incurred as a result of the mandate for at least the first 12-month period following the operative date of the mandate. A typical estimate includes costs broken down by each eligible past or current fiscal year as well as one fiscal year of projected costs.

Before the Commission may adopt or reject a statewide cost estimate, it must hold at least one Commission hearing. At the hearing, staff discloses the basis for assumptions made and the source of all data used to develop the estimate. If the Commission approves a statewide cost estimate, the next step in the reimbursement process is to report the estimate to the Legislature.

#### Annual Claims Bill

A claims bill is introduced each year to appropriate funds to reimburse local agencies and school districts for new mandates reported by the Commission. The claims bill is based upon the Commission's report to the Legislature. This process coincides with the legislative session and the budget. The Governor issues the proposed State Budget in January and DOF revises the proposed budget in May to incorporate changes in incoming state revenues. If the Commission adopts subsequent statewide cost estimates in time for DOF's May Revision, the local claims bill may be amended to include these totals. Generally, school district reimbursements are characterized as Proposition 98 funds.

#### Claims for Reimbursement

Initial claims for reimbursement are filed with the Controller within 120 days after issuance of the Claiming Instructions.<sup>5</sup> If funds have been appropriated to the Controller through a Claims Bill or the Annual Budget Act, the Controller will pay claims within 60 days. Any funds received by a claimant may be used for any public purpose.<sup>6</sup>

#### Amendment to Ps&Gs

Ps&Gs may be amended by a request from a claimant or state agency. All requests for amendments must outline the specific sections of the existing Ps&Gs that are to be changed and include a narrative outlining why the amendment is required. The procedures for requesting and adopting amended Ps&Gs are the same as those utilized in the adoption of the original Ps&Gs. If amendments to the Ps&Gs are filed before the deadline for filing initial claims, the amendments shall apply to all years eligible for reimbursement.

### **B. Overview of the Special Education Test Claim<sup>7</sup>**

On October 31, 1980, Santa Barbara filed a test claim with the Board. Santa Barbara sought reimbursement for costs incurred in the 1979-80 fiscal year to provide special education services as required by Chapters 1247/77 and 797/80.

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<sup>5</sup> If the claiming instructions are issued on November 15, 1999, claims for reimbursement should be filed by March 15, 2000.

<sup>6</sup> Government Code section 17563.

<sup>7</sup> This section taken from the Special Education Statement of Decision. (See Volume I, Bates Page 41.)

The Board adopted a decision denying Santa Barbara's claim. The Board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government and that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings inadequate. Judgment was rendered requiring the Board to set aside its decision, to rehear the matter, and to establish a proper record, including findings. The judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for costs incurred regarding the provision of special education in the 1980-81 fiscal year. The Board denied Riverside's claim for the same reasons that the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision, the superior court accepted the Board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the Board that any appropriation in the state budget act necessarily satisfies the state's subvention obligation. The court concluded that the Board failed to consider whether the state had fully reimbursed local districts for the state-mandated costs that were in excess of the federal mandate and remanded the matter for consideration of that question. The judgment was not appealed.

On remand, the Board adopted a decision holding that all special education costs under Chapters 1247/77 and 797/80 are state-mandated costs subject to subvention. The Board reasoned that the federal Education of Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law. Therefore, special education programs are optional in the absence of a state mandate.

The claimants were directed to draft Parameters and Guidelines and the Board adopted them. The Board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-81 through 1985-86 fiscal years would be more than \$2 billion. Proposed legislation that would have appropriated funds for reimbursement of special education costs during the 1980-81 through 1985-86 fiscal years failed to pass in the Legislature (Sen. Bill No. 1082 (1985-1986 Reg. Sess.)). A separate bill which would have appropriated funds to reimburse Riverside for its 1980-81 claim also failed to pass (Sen. Bill No. 238 (1987-1988 Reg. Sess.)).

At this point Mr. Huff, Director of DOF, brought an action in administrative mandate to set aside the decision of the Board. Riverside cross-petitioned for a writ of mandate directing the state, the State Controller, and the State Treasurer to issue a warrant in payment of its claim for the 1980-81 fiscal year.

The superior court concluded that the Board did not apply the appropriate standard in determining whether any portions of local special education costs were incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the California Supreme Court in *City of Sacramento v. State of California*<sup>8</sup> "marked a departure from the narrower 'no discretion' test" of the appellate court in the earlier decision involving the

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<sup>8</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

*City of Sacramento* case.<sup>9</sup> The superior court further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively."

Accordingly, the superior court issued a peremptory writ of mandate directing the Commission to set aside the decision of the Board, to reconsider the claims in light of the decision in *City of Sacramento*, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. The judgment was appealed.

### **C. The Hayes Decision and the Special Education Test Claim Remand**

On December 30, 1992, the appellate court in *Hayes v. Commission on State Mandates*,<sup>10</sup> agreed with the superior court and remanded the test claim to the Commission for consideration in light of the test set forth in the California Supreme Court's *City of Sacramento* decision.

In *City of Sacramento*, the court explained that under the "true choice test" it must be determined whether participation in the federal program is truly voluntary. The *Hayes* court echoed *City of Sacramento*, explaining that the "true choice test" can only be made on a case by case basis, taking into account such factors as "the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal."<sup>11</sup>

The *Hayes* court determined that, under the criteria established in *City of Sacramento*, the 1975 amendments to the Education of the Handicapped Act imposed a federal mandate upon the State of California. However, the *Hayes* court stated that "while the state had no real choice in deciding whether to comply with the federal act, the act *did not necessarily require the state to impose all of the costs of implementation upon local school districts.*"<sup>12</sup> (Emphasis added.) The *Hayes* court then concluded "[t]o the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local districts, the costs of such programs or higher levels of service are state mandated and subject to subvention."<sup>13</sup> In light of this conclusion, *Hayes* directed the Commission to focus on the costs incurred by local school districts and whether those costs were imposed by a federal mandate or by the state's voluntary choice in its implementation of the federal program.

In response to the appellate court's ruling in *Hayes*, Riverside submitted a test claim on 17 program areas or activities regarding special education. Riverside prepared a comparative

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<sup>9</sup> In the earlier *City of Sacramento* case ((1984) 156 Cal.App.3d 182), the appellate court assumed that if an expense was considered to be both state and federally mandated the expense could never be considered state mandated even when passed on to local agencies by the state. The Supreme Court in *City of Sacramento*, while it did not enunciate a final test for "optional" versus "mandatory" compliance with federal law, noted that this distinction could only be made on a case-by-case basis. The Supreme Court further expressed its concern that using the strict interpretation followed by the appellate court might result in a finding of a federal mandate even under circumstances where the state's participation is a matter of true choice.

<sup>10</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564. (See Volume I, Bates Page 1.)

<sup>11</sup> *Id.* at 1582.

<sup>12</sup> *Id.* at 1594.

<sup>13</sup> *Ibid.*

federal and state analysis of the current state and federal law on these 17 program areas and proposed that the scope of the test claim be restricted to exclude the time-period preceding July 1, 1993, the beginning date of the 1993-94 fiscal year.

The Commission decided that other school districts may join the present test claim and include other program areas or activities related to special education in the comparative analysis that were not set forth in Riverside's test claim filing. Riverside filed a Summary of Relevant State and Federal Special Education Statutes and Regulations for the years 1980-1995. The Commission consolidated eight other test claims with the Riverside test claim. These supplemental claims were filed by San Mateo-Foster City School District, Palo Alto Unified School District, Oakland Unified School District, North Region SELPA (Alameda Unified School District, Administrative Unit), Newport-Mesa Unified School District, Grant Union High School District, Contra Costa SELPA, and Castro Valley Unified School District.

#### **D. Commission Decision on the Special Education Test Claim**

The Special Education Test Claim consists of 19 separate program areas considered by the Commission. The 19 program areas are as follows: (1) Maximum Age Limit; (2)(A) Maximum Enrollment Caseloads for Resource Specialists; (2)(B) Maximum Enrollment Caseloads for Language, Speech, and Hearing Specialists; (3) Community Advisory Committees; (4) Individualized Education Program Timelines; (5) Psychological Requirements; (6) Related Services; (7) Transportation; (8) Surrogate Parents; (9) Preschool Transportation for Ages 3-5 Not Requiring Intensive Services (Not-RIS); (10) Eligibility Criteria for Specific Learning Disabilities; (11) Definition of Severely Handicapped; (12) Extended School Year; (13) Interim Placements; (14) Governance Structure; (15) Non-Public Schools (Individual Service Agreements); (16)(A) Parent Notice and Access to Records; (16)(B) Written Parental Consent; (17) Payment of Attorney's Fees in Administrative Due Process Proceedings and IEP Meetings; (18) Resource Specialist Program; and (19) Ten Percent (10%) Restriction of Total Enrollment.

The Commission adopted its Statement of Decision for the Special Education Test Claim on November 30, 1998. The decision was effective on December 11, 1998. The Commission found the following eight program areas represented reimbursable state mandates: (1) Maximum Age Limit; (2) Community Advisory Committee; (3) Governance Structure; (4) Enrollment Caseloads (both Resource Specialists and Language, Speech, and Hearing Specialists); (5) Extended School Year; (6) Interim Placements; (7) Resource Specialist Program (excluding maximum caseloads); and (8) Written Parental Consent.

On January 11, 1999, the claimants submitted their Proposed Parameters and Guidelines.<sup>14</sup> The Department of Finance and interested parties filed comments. On June 23, 1999, the claimants submitted their Rebuttal and Amended Parameters and Guidelines upon which staff based its Draft Staff Analysis. On July 26, 1999, DOF submitted its comments on the Draft Staff Analysis and claimants' June 23, 1999, submittal. On August 13, 1999, the claimants submitted their

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<sup>14</sup> On January 11, 1999, Jack B. Clarke, Jr. of Best, Best & Krieger, representing the claimant Riverside County Superintendent of Schools, and Diana K. McDonough, of Lozano Smith, representing supplemental claimants Castro Valley Unified School District, Oakland Unified School District, San Mateo-Foster City School District, Grant Joint Union High School District, Palo Alto Unified School District, Newport-Mesa Unified School District, Contra Costa Special Education Local Plan Area, North Region Special Education Local Plan Area, (hereinafter "claimants") filed the claimants' Proposed Parameters and Guidelines. (*See* Volume II, Bates Page 235.)

comments on the Draft Staff Analysis and DOF's July 26, 1999, submittal. On August 25, 1999, staff released its Final Analysis/Parameters and Guidelines. On August 31, 1999, both the claimants and DOF submitted comments on staff's Final Analysis/Parameters and Guidelines.

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## PART II – LEGAL ISSUES

### **Issue 1 – Offsets:**

#### **SHOULD THE COMMISSION ON STATE MANDATES ADOPT OFFSET LANGUAGE IN THE SPECIAL EDUCATION PARAMETERS AND GUIDELINES?**

During the hearings and in its submittals for the Proposed Statement of Decision, DOF asserted that offsetting savings existed for the eight program areas found by the Commission to represent reimbursable state-mandated programs.<sup>15</sup> At the November 30, 1998, hearing, the Commission deferred discussion of the offset issue to the Parameters and Guidelines phase. The staff analysis section below addresses the application of Government Code section 17556, subdivision (e), and the applicability of offsets to the eight reimbursable program areas.

#### **Commission’s Authority and Experience with Offsets**

Government Code section 17556 provides that the Commission shall not find costs mandated by the state if the Commission finds that the source of the mandate provides for offsetting savings that result in no net costs to local agencies or school districts, or includes additional revenue that was specifically intended to sufficiently fund the costs of the state mandate.<sup>16</sup> In addition, Title 2, California Code of Regulations, section 1183.1, provides that “all proposed Parameters and Guidelines must allow for an offset of any reimbursement received from the federal or state governments or other non-local sources.” Thus, the Commission includes a paragraph in all Parameters and Guidelines outlining the claimant’s responsibilities regarding offsets. This offset paragraph provides:

“Any offsetting savings the Claimant experiences as a result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for mandated activities received from any source, including (but not limited to) service fees collected, federal funds, and other state funds shall be identified and deducted from the amount claimed.”

The Commission has also included specific offset language in numerous sets of Parameters and Guidelines. For example, the Parameters and Guidelines for CSM-4282, *Handicapped and Disabled Students* identifies offsetting savings for:

“Any direct payments (categorical payments) received from the State which are specifically allocated to this program; and any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal state, etc.”

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<sup>15</sup> See footnote one in Department of Finance’s Response to Test Claimants’ Proposed Parameters and Guidelines, page 1. (Volume II, Bates Page 265.)

<sup>16</sup> Government Code section 17556 provides: “The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: . . . (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. . . .”



### **Claimants' Original Proposed Offset Language<sup>17</sup>**

On page 13 of the claimants' Proposed Parameters and Guidelines, in section IX entitled "OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS," the claimants propose adoption of the following language:

"Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., service fees collected, federal funds, other state funds, etc., shall be identified and deducted from this claim."

Staff notes that this language is similar to the language the Commission has included in past Parameters and Guidelines.

### **Department of Finance's Response<sup>18</sup>**

DOF, on page 4 of its response, under section 3 entitled "The Offset Principle," states that:

"It is a well settled principle of law that a party found to have a monetary obligation must be given credit for payments already made on that obligation. Where payments have already matched or exceeded the amount of the obligation, of course, the duty to pay is entirely satisfied."<sup>19</sup>

DOF submits that the claimants "plainly concede that this offset principle [from Government Code section 17556, subdivision (e)] must be applied in the present phase of the proceedings."<sup>20</sup>

DOF asserts that the question presented concerning offsets centers on "whether and to what extent state money has already been made available to the LEA's [local educational agency] and SELPA's [special education local plan area] for the funding of costs incurred by virtue of the eight programs and services found by the Commission to be 'state mandated'."<sup>21</sup> It is DOF's position that there is an "overwhelming imbalance" in the state's favor between the possible statewide costs for the eight mandated programs and the actual state special education funding. DOF finds that the projected maximum costs for the Special Education Test Claim to represent "less than 10 percent of the actual state funding made available to fund the eight programs found by the Commission to have been state mandated."<sup>22</sup> DOF maintains that "[i]n any fair and equitable system of costing and accounting, such state funding must in every case first be deemed available for the costs of those state requirements that exceed federal law."<sup>23</sup>

Finally, DOF concludes that:

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<sup>17</sup> See claimants January 11, 1999, submittal. (Volume II, Bates Page 235.)

<sup>18</sup> On April 23, 1999, the Department of Finance filed its Response to Test Claimants' Proposed Parameters and Guidelines. (Volume II, Bates Page 265.)

<sup>19</sup> DOF is generally citing to *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352. Staff notes that although this case discusses offsets relating to creditors' rights, it is not a mandates case. *Kruger* does not support DOF's contention that the state has provided funds for special education in excess of the costs of the eight reimbursable program areas and therefore, the state owes the claimants nothing. (Volume II, Bates Page 268.)

<sup>20</sup> *Id.* at 5. (Volume II, Bates Page 269.)

<sup>21</sup> *Id.* at 5, 6. (Volume II, Bates Pages 269-270.)

<sup>22</sup> *Id.* at 7. (Volume II, Bates Page 271.)

<sup>23</sup> *Ibid.*

“In light of the current funding formula, it can be said with certainty that the State’s funding for Special Education, as provided to LEA’s and SELPA’s and as available to cover those programs and services the Commission has here found to be ‘state mandated,’ will continue to far exceed the maximum possible costs associated with those programs and services. Accordingly, those programs and services have never been, and will never be *unfunded* state mandates, . . . and there are no grounds upon which any valid claim for reimbursement could be filed under the Commission’s findings.”<sup>24</sup> (Emphasis in original.)

### **Interested Party Comments**<sup>25</sup>

Mandated Cost Systems, Inc. (MCS) submitted comments to the claimants’ Proposed Parameters and Guidelines contending that “[s]ince this is the first mandated cost program where the mandate is performed by employees paid for with restricted funds, all offsets, if any, must be clearly defined therein.” MCS concludes “[w]e feel that the funding sources used to fund special education do not meet the State Controller’s Office definitions of required claim offsets.”<sup>26</sup> MCS maintains that any revenue source which is generated from a State School Fund Apportionment or is enrollment/ADA based is exempt under the Controller’s definition of offsetting savings, which generally provide:

“State School Fund apportionments and federal aid for education which are based on average daily attendance and are part of the general system of financing public schools, as well as block grants which do not provide for specific reimbursement of costs (i.e., allocation formulas not tied to expenditures) should not be included as reimbursements from local assistance revenue sources.”<sup>27</sup>

### **Claimants’ Rebuttal to Department of Finance’s Response**<sup>28</sup>

The claimants, in their rebuttal to DOF’s response to Proposed Parameters and Guidelines, contend DOF’s argument, that the eight special education program areas are fully funded, is untimely. Claimants assert that the argument that the eight program areas are fully funded is a substantive argument that should have been addressed during the test claim process. Specifically, the claimants state “[i]f, indeed, the mandates are fully funded, they cannot, by definition, be reimbursable state mandates. . . .”<sup>29</sup>

The claimants contend that “there is no legal or factual basis to support DOF’s argument that, under the ‘offset rule,’ schools have been fully reimbursed for the costs of the state mandates found in the Special Education Test Claim.”<sup>30</sup> The claimants provide that “the only statute, [Education Code section 56826] which addresses the expenditure of state special education funds

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<sup>24</sup> *Id.* at 8. (Volume II, Bates Page 272.)

<sup>25</sup> On April 22, 1999, Mandated Cost Systems, Inc., filed comments on the claimants’ Proposed Parameters and Guidelines. (Volume II, Bates Page 251.)

<sup>26</sup> *Id.* at 5. (Volume II, Bates Page 255.)

<sup>27</sup> *Id.* at 9. (Volume II, Bates Page 259.)

<sup>28</sup> On June 23, 1999, the claimants filed their Rebuttal to Responses to Proposed Parameters and Guidelines. (Volume III, Bates Page 559.)

<sup>29</sup> *Id.* at 3. (Volume III, Bates Page 567.)

<sup>30</sup> *Id.* at 4. (Volume III, Bates Page 568.)

by LEAs states simply: funds apportioned to districts, special education regions, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.”<sup>31</sup> In any case, the claimants argue the relevant statutory law governing mandates requires that the offsetting revenues be specifically intended to fund the mandate. Accordingly, claimants conclude that DOF’s position, that “generally available” funds must be used to fund a specific mandate, is contrary to law.<sup>32</sup>

Finally, the claimants contend that “with few exceptions, the Legislature had not provided revenues specifically intended to fund the costs of the mandates, or if provided, the revenue is insufficient.”<sup>33</sup> However, claimants note that resource specialist aides, enrollment caseloads, extended school year, governance structure, and community advisory committees receive specific funding allocations in the Education Code.<sup>34</sup> Accordingly, the claimants’ Amended Parameters and Guidelines provide that “reimbursement for the mandate received from any source shall be identified and deducted from claims.”<sup>35</sup> In addition, the claimants’ Parameters and Guidelines provide that “if the school district’s total special education program costs did not encroach, no reimbursement shall be claimed.”

### **Riverside and Interested Party Rebuttals to Department of Finance’s Response**

#### **Riverside**<sup>36</sup>

Riverside, in its reply to DOF’s response to the claimants’ Proposed Parameters and Guidelines, contends that:

“The State has steadfastly argued that there could not be state mandates in special education. . . . Now, after the Commission has found that there are existing state mandates, the State makes the bald assertion that it has paid the state mandates which it steadfastly denied existed.”<sup>37</sup>

Riverside continues:

“DOF is alleging it has already paid for the state mandates owed to Riverside because of the overall state funding provided to LEAs over the years. This bald allegation creates the conundrum of how an entity can be paying for an obligation or debt which it has always alleged does not exist.”<sup>38</sup>

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<sup>31</sup> *Id.* at 5. (Volume III, Bates Page 569.)

<sup>32</sup> *Id.* at 6, 7. (Volume III, Bates Pages 570-571.)

<sup>33</sup> *Id.* at 14. (Volume III, Bates Page 578.)

<sup>34</sup> The claimants state that the Education Code provides specific funding for: (1) resource specialist teachers and aides in sections 56720-56728; (2) enrollment caseloads in sections 56720-56728 (however, monitoring caseloads and participation in the waiver process is *not* funded under these sections); (3) extended school year in section 56726; and (4) governance structure and community advisory committees in sections 56220, 56780, and 56781. However, the claimants contend that none of the preceding programs were ever fully funded by the state. (*Id.* at 14-19.) (Volume III, Bates Pages 578-583.)

<sup>35</sup> *Id.* at 19. (Volume III, Bates Page 583.)

<sup>36</sup> On June 23, 1999, Riverside filed its Reply Brief to Department of Finance’s Response to the Test Claimants’ Proposed Parameters and Guidelines. (Volume IV, Bates Page 1147.)

<sup>37</sup> *Id.* at 7. (Volume IV, Bates Page 1155.)

<sup>38</sup> *Id.* at 8. (Volume IV, Bates Page 1156.)

### **Long Beach Unified School District**<sup>39</sup>

Long Beach Unified School District, in its rebuttal to the offset arguments in DOF's response to the claimants' Proposed Parameters and Guidelines, contends that:

“(1) The state is not entitled to an offset against its obligation to reimburse the school districts for state-mandated costs because the state does not have a legally enforceable claim to offset; (2) the state has waived the right to offset by not asserting its claim within a reasonable time; and (3) there is no substantial evidence to support the contention that any state funding is provided for the programs the commission has found to be state-mandated.”<sup>40</sup>

### **Commission Staff's Draft Analysis**<sup>41</sup>

Staff found that although the state had provided substantial funding for special education, only four program areas received funding specifically intended to fund the mandate.

### **Department of Finance's Comments on Draft Staff Analysis**<sup>42</sup>

DOF reiterates its position that the state has paid for those eight program areas found by the Commission to be reimbursable some ten times over. DOF contends that “the Commission *must* credit the State for all funds that the State has already made available for these state-mandated programs; this result is required by the theory of subvention, by statutory history, by common sense, and by fundamental fairness.”<sup>43</sup> (Emphasis in original.)

DOF states that “the fundamental theory and purpose of subvention under section 6 of Article XIII B of the Constitution is to ‘reimburse’ local governmental entities for actual ‘out-of-pocket’ expenses they necessarily incurred.”<sup>44</sup>

Moreover, DOF contends that the Enrolled Bill Report for SB 1014 (SB 1014 amended Government Code section 17556) supports its conclusion that “the proper test for finding a reimbursable state mandate must be whether local government actually incurred any *net costs* as a result of the mandate.”<sup>45</sup> (Emphasis in original.)

DOF contends that “the Commission's focus must be limited to a comparison between the cost of the eight discrete state-mandated programs, on the one hand, and the total state dollars that school districts already had available to defray those costs, on the other.”<sup>46</sup>

### **Claimants' Comments on Draft Staff Analysis and Department of Finance's Comments**<sup>47</sup>

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<sup>39</sup> On June 22, 1999, Long Beach Unified School District, interested party, filed its Rebuttal to the Offset Argument in the Department of Finance's Comments on the Claimants' Proposed Parameters and Guidelines. (Volume III, Bates Page 531.)

<sup>40</sup> *Id.* at 1. (Volume III, Bates Page 533.)

<sup>41</sup> Staff released its Draft Staff Analysis on July 8, 1999. (Volume IV, Bates Page 1167.)

<sup>42</sup> On July 26, 1999, the Department of Finance filed its Comments Re: Draft Staff Analysis of Claimants' Proposed Parameters and Guidelines. (Volume IV, Bates Page 1229.)

<sup>43</sup> *Id.* at 3. (Volume IV, Bates Page 1231.)

<sup>44</sup> *Id.* at 8. (Volume IV, Bates Page 1236.)

<sup>45</sup> *Id.* at 5. (Volume IV, Bates Page 1233.)

<sup>46</sup> *Id.* at 12. (Volume IV, Bates Page 1240.)

The claimants contend that “DOF’s July 26, 1999 comments are nothing more than a rehash of its ‘available funding’ theory. Once again, DOF has cited no statutory authority or case law to support its untenable argument that ‘the Commission *must* credit the State for all funds that the State has already made available for these state-mandated programs.’”<sup>48</sup>

The claimants contend that DOF is wrong regarding the fundamental theory and purpose of subvention. The claimants state that “the fundamental purpose of subvention is to prevent the state from shifting responsibility for state mandates to local agencies without allocating funds specifically intended to fund the mandates in an amount sufficient to fund the mandates.”<sup>49</sup>

The claimants go on to state, “the activities the Commission has found to be state mandates are not, by definition, essential for the provision of FAPE<sup>50</sup> to disabled children because they are in excess of what federal law requires.”<sup>51</sup> The claimants further state that “LEA’s highest priority for expenditure of state and local funds must be those programs and activities essential for ensuring that each disabled child in the LEA’s jurisdiction receives FAPE. Surely the state would not argue that an LEA should overlook its federal constitutional responsibilities.”<sup>52</sup> Therefore, “it follows that state funds are not necessarily ‘available’ for the state-mandated activities because they must first be expended to ensure FAPE.”<sup>53</sup>

#### **Commission Staff’s Final Analysis**<sup>54</sup>

Staff found that although the state had provided substantial funding for special education, only four program areas received funding specifically intended to fund the mandate. Government Code section 17556, subdivision (e), provides that the Commission shall not find costs mandated by the state if the statute or executive order includes additional revenue *specifically intended* to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate. Therefore, based on the documentation provided by the parties, staff finds that although the state has provided substantial funding for special education, only the four program areas identified above received funding *specifically intended* to fund the costs of the state mandate.

#### **Claimants’ Comments on Final Staff Analysis/Parameters and Guidelines**<sup>55</sup>

The claimants, on pages 2-3 of their comments, support staff’s analysis regarding the offset issue and urge the Commission’s adoption of **OPTION 1**.

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<sup>47</sup> On August 13, 1999, the claimants filed their Comments on Draft Staff Analysis and Rebuttal to the Department of Finance’s July 26, 1999, Comments. (Volume IV, Bates Page 1271.)

<sup>48</sup> *Id.* at 26. (Volume IV, Bates Page 1303.)

<sup>49</sup> *Id.* at 27. (Volume IV, Bates Page 1304.)

<sup>50</sup> FAPE is a federal concept and is defined as a “free appropriate public education” which is “special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate private preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under . . . this title.” (*See* Title 20, United States Code, Section 1401.)

<sup>51</sup> *See* claimants August 13, 1999, submittal at page 27. (Volume IV, Bates Page 1304.)

<sup>52</sup> *Id.* at 31. (Volume IV, Bates Page 1308.)

<sup>53</sup> *Ibid.*

<sup>54</sup> Staff released its Final Analysis on August 25, 1999. (Volume IV, Bates Page 1615.)

<sup>55</sup> The claimants filed their comments on August 31, 1999. (Volume IV, Bates Page 1687.)

### **Department of Finance's Comments on Final Staff Analysis**<sup>56</sup>

DOF contends that “staff’s FSA [Final Staff Analysis] inexplicably omitted any mention of the important ‘Proportionate Offset’ argument presented by the Department in its July 26, 1999 Comments.”<sup>57</sup> DOF contends that staff should have included an Option 3, which would allow the Commission to adopt its Proportionate Offset approach.<sup>58</sup>

DOF states that staff “does not purport to set forth any ‘default’ rule about what happens if the Commission finds that state revenues, though clearly available to fund the state-mandated activities, were *not* ‘specifically intended’ to do so within the meaning of the second clause of Section 17556(e).”<sup>59</sup> (Emphasis in original.)

DOF therefore concludes that:

“Absent any statutory provision dictating specific funding and/or cost burdens, a far more fair and logical ‘default’ rule in such circumstances would be to assume that state and local funds were spent on the state-mandated costs of these component activities *in the same proportion as they were spent on the overall program*. Thus, at the very least, the State must be credited, through ‘Proportionate Offset,’ for the proportionate share of funding that it has already contributed to the overall Special Education program, because the State has already incurred at least those costs.”<sup>60</sup> (Emphasis in original.)

### **Staff Analysis**

Section 17556, subdivision (e), sets forth two tests for determining whether the Commission shall find that there are no costs mandated by the state. Under the first test, the Commission shall find there are no costs mandated by the state if the statute or executive order provides for offsetting savings that result in *no net costs*. The second test of section 17556, subdivision (e), provides that the Commission shall find there are no costs mandated by the state if the statute or executive order includes additional revenue *specifically intended* to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Staff notes that section 17556 issues are normally addressed at the Test Claim phase, not the Parameters and Guidelines phase. However, due to the Commission’s decision to defer discussion of offsets until the Parameters and Guidelines phase, DOF’s arguments relating to section 17556, subdivision (e), are not untimely.

It is staff’s conclusion that DOF oversimplifies the application of section 17556, subdivision (e), by concluding that if any funding has been provided for the eight program areas these programs are ineligible for reimbursement. The fact an agency or school district has received funding is only the beginning of the analysis. The Commission must then determine if either of the two tests of section 17556, subdivision (e), apply.

#### **(1) Does the Statute or Executive Order Provide for Offsetting Savings that Result in No Net Costs?**

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<sup>56</sup> The Department of Finance filed its comments on August 31, 1999. (Volume IV, Bates Page 1705.)

<sup>57</sup> *Id.* at 6. (Volume IV, Bates Page 1710.)

<sup>58</sup> *Ibid.*

<sup>59</sup> *Id.* at 7. (Volume IV, Bates Page 1711.)

<sup>60</sup> *Id.* at 7-8. (Volume IV, Bates Pages 1711-1712.)

As stated above, under the first test of Government Code section 17556, subdivision (e), the Commission shall not find costs mandated by the state if the statute or executive order provides for *offsetting savings which result in no net costs* to local agencies or school districts.

DOF does not specifically contend that the test claim legislation provides for offsetting savings that result in no net costs to the claimants. Staff notes that Education Code section 56826 provides that: “funds apportioned to districts, special education local plan areas, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.” However, staff concludes that there is nothing in this section or any other provision of the test claim legislation that specifically provides for *offsetting savings which result in no net costs* to the claimants.

Accordingly, staff concludes that there is no evidence that the test claim legislation provides for *offsetting savings which result in no net costs* to the claimants. However, the analysis must continue to determine whether the second test of section 17556, subdivision (e), applies.

(2) Does the Statute or Executive Order Include Additional Revenue Specifically Intended to Fund the Costs of the State Mandate in an Amount Sufficient to Fund the Cost of the State Mandate?

As stated above, the second test of Government Code section 17556, subdivision (e), provides that the Commission shall not find costs mandated by the state if the statute or executive order includes additional revenue *specifically intended* to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate.

The implementing Education Code sections for the eight program areas do not include additional revenue *specifically intended* to fund the cost of the state mandates. However, Chapter 797/80, et al. include several provisions on the apportionment of federal and state funds.<sup>61</sup> Moreover, Education Code section 56826 provides that: “funds apportioned to districts, special education local plan areas, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.”

DOF contends that the Commission must credit the state for all funds that the state has already made available for these programs. In addition, DOF asserts that the state has more than paid for the eight program areas and therefore, school districts have not incurred any net costs. Moreover, DOF contends that “the State must be credited, through ‘Proportionate Offset,’ for the proportionate share of funding that it has already contributed to the overall Special Education program, because the State has already incurred at least those costs.”

The claimants agree that the state has provided substantial funding for special education. However, the claimants contend that under the second test of section 17556, subdivision (e), funds must be specifically intended to fund a particular mandate in an amount sufficient to fund the cost of the state mandate. The claimants acknowledge that the following program areas were specifically funded, at least partially, under the Education Code:<sup>62</sup>

- (1) Community Advisory Committees;
- (2) Governance Structure;
- (3) Extended School Year; and
- (4) Resource Specialists (including aides and enrollment caseloads).

Even if the Commission accepts DOF’s argument that school districts must allocate state funds for the eight program areas before any other programs, school districts would not have been able to determine which state mandated programs would be eligible for reimbursement absent the Commission’s Statement of Decision on the Special Education Test Claim. Therefore, a program-by-program analysis must be done to determine which programs received funding specifically intended to fund the mandate in an amount sufficient to fund the cost of the state mandate. The claimants did such an analysis in Attachment 7 in their June 23, 1999, Rebuttal to Responses to Proposed Parameters and Guidelines.

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<sup>61</sup> See Education Code sections 56700-56832. Several of these sections detail the requirements regarding the apportionment of federal and state funds to SELPAs, LEAs, and school districts.

<sup>62</sup> See claimants’ Rebuttal to Responses to Proposed Parameters and Guidelines, pages 14-20. (Volume III, Bates Pages 578-583.)



The claimants state that the Education Code provides specific funding for: (1) Governance Structure and Community Advisory Committees in sections 56220, 56780, and 56781; (2) Extended School Year in section 56726; (3) Enrollment Caseloads in sections 56720-56728 (however, monitoring caseloads and participation in the waiver process is *not* funded under these sections); and (4) Resource Specialist teachers and aides in sections 56720-56728. However, the claimants contend that none of the preceding programs were funded in an amount sufficient to fund the cost of the state mandate.

Therefore, based on the documentation provided by the parties, staff finds that although the state has provided substantial funding for special education, only the four program areas identified above received funding *specifically intended* to fund the costs of the state mandate. However, based upon the parties' submissions, staff finds that the test claim statutes did not *specifically* provide for funding in an amount sufficient to fund the entire cost of the state mandate. Thus, in accordance with the Commission's regulations,<sup>63</sup> staff's Proposed Parameters and Guidelines include specific language addressing the offsets for these program areas.

In its August 31, 1999, submittal, DOF proposed a new Option 3 for the Commission's consideration.<sup>64</sup> Option 3 offers the Commission a finding to support DOF's proportional offset argument. Staff notes that the claimants have not had an opportunity to comment on the specific text of Option 3.

Staff has reviewed Option 3 and does not recommend the Commission adopt Option 3 for the following reasons:

- Legislative intent provides that the special education statutory scheme was enacted to implement federal law.
- State law provides that school districts and SELPAs must expend federal and state revenues exclusively for federal and state mandated special education programs. School districts and SELPAs determine how these funds will be expended. Staff agrees that districts may expend these funds on the overall Special Education Program, i.e., the eight reimbursable program areas and the remaining federal mandate. However, there is no requirement in state law for school districts and SELPAs to first expend federal and state revenue apportionments on the eight reimbursable program areas.
- State law provides additional revenue specifically intended to fund the cost of four of the eight reimbursable program areas. Accordingly, staff finds that the state is entitled to offsets for these four program areas, and that any funds received by eligible claimants from any source will be offset from reimbursement claims.
- Staff's and the claimants' proposed parameters and guidelines specify that claimants are not eligible for reimbursement unless the costs of the overall Special Education Program have encroached on local general funds.

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<sup>63</sup> See Title 2, California Code of Regulations, section 1183.1.

<sup>64</sup> Department of Finance's August 31, 1999, submittal at page 6. (Volume IV, Bates Page 1710.)

### **Commission Findings**

Based on the arguments presented above, the Commission may adopt one of the following findings concerning the application of offsets:

**OPTION 1:** The Commission finds that only four program areas received revenue specifically intended to fund the costs of those program areas. However, the Commission finds that these programs were not specifically funded in an amount sufficient to fund the entire cost of the state mandate. Accordingly, the Parameters and Guidelines must include language to explain that additional revenue specifically intended to fund the cost of the state mandates shall be deducted from the costs claimed.

If the Commission adopts **OPTION 1**, the Commission will continue to hear and decide the Uniform Cost Rate issue below.

**OPTION 2:** The Commission finds that the state has provided additional revenue specifically intended to fund the eight program areas in an amount sufficient to fund the cost of these programs. Therefore, the claimants are not entitled to reimbursement.

If the Commission adopts DOF's **OPTION 2**, the hearing is over and the Commission need not hear the Uniform Cost Rate issue since it will have found that the eight program areas are fully funded.<sup>65</sup>

**OPTION 3:** The Commission finds that the Special Education program, including the eight state-mandated component found by the Commission, was generally funded from a mixture of state, federal, and local funds. The Commission therefore finds that the State is entitled to offsets for those eight components in an amount proportionate to the State's contribution to funding of the overall Special Education program, and that the State is further entitled to offset any additional state funding that was directed to individual component activities. Accordingly, the Commission shall conduct further proceedings to determine the State's proportionate contribution to overall funding of the program, and the Parameters and Guidelines must include language to explain that such offsetting revenues shall be deducted from the costs claimed.

If the Commission adopts DOF's **OPTION 3**, the Commission will continue to hear and decide the Uniform Cost Rate issue below. However, the Commission will need to schedule additional hearings to determine the proportionate contribution to overall funding of the Special Education Program.

### **Staff Recommendation**

Staff recommends that the Commission adopt **OPTION 1**.

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<sup>65</sup> Staff notes that DOF provides on page 9 of its Response: "the eight programs and services found by the Commission to be state mandates in the proceeding 'have never been and will never be 'unfunded mandates' within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514,' and that, pursuant to Government Code section 17556(e) and consistent with common sense, the Claimants' requests for further state subvention must be categorically denied and these proceedings terminated." (Volume II, Bates Page 273.)

## **Issue 2 – Uniform Cost Rates:**

### **SHOULD THE COMMISSION ON STATE MANDATES INCLUDE UNIFORM COST RATES IN THE SPECIAL EDUCATION PARAMETERS AND GUIDELINES?**

#### **Commission’s Authority and Experience with Uniform Cost Rates**

Government Code section 17557 provides that, in adopting Parameters and Guidelines, the Commission may adopt an allocation formula or uniform allowance that provides for reimbursement of a specified amount each year.<sup>66</sup> In addition, to encourage claimants to propose uniform cost allowances, Title 2, California Code of Regulations, section 1183.1, provides that “whenever possible, an allocation formula or uniform allowance should be used as the basis for reimbursement.”

Not every set of Parameters and Guidelines adopted by the Commission includes uniform cost rates. However, uniform cost rates have been utilized in previously adopted Parameters and Guidelines. For example, copying and mailing costs are frequent candidates for uniform cost rates.<sup>67</sup> In addition, uniform cost rates have also been applied to specific activities.<sup>68,69</sup>

#### **Claimants’ Inclusion of Uniform Cost Rates**

For each program area found by the Commission to represent a reimbursable state mandate, the claimants, in their Proposed Parameters and Guidelines, included a section outlining uniform allowances as appropriate.<sup>70</sup>

#### **Department of Finance’s Response to Claimants’ Inclusion of Uniform Cost Rates**

DOF contends it was never notified that the Commission had adopted uniform cost rates for any of the eight reimbursable program areas. DOF adds “it appears that Claimants *were* notified of the uniform allowances, since Riverside purports to incorporate such allowances in their proposed P’s & G’s.”<sup>71</sup> (Emphasis in original.) DOF expresses its concern “that Claimants may have had an opportunity to confer and/or present evidence and arguments to the Commission concerning uniform allowances, without any input or comments from the Department or from other parties.” DOF concludes “[s]uch one-sided, ex parte procedure would be fundamentally unfair” and requests that:

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<sup>66</sup> Government Code section 17557, subdivision (b), provides: “(b) In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.”

<sup>67</sup> See CSM-4461, *Annual Parent Notification* (includes CSM-4445, 4453, 4474, and 4488); and CSM-4457/4477, *Pupil Behavioral/Health Exclusions*.

<sup>68</sup> In CSM 96-362-02, *Domestic Violence Arrest Policies and Standards*, the Commission adopted a uniform cost rate for the time it took officers to identify the primary aggressor in any domestic violence incident. This rate was based on one declaration.

<sup>69</sup> The claimants, in their August 13, 1999, submittal at page 36, provide other examples where uniform cost allowances have been adopted – Expulsion Reports, Notification of Truancy, Scoliosis Screening, Immunization Records, and Schoolsite Discipline Rules. (Volume IV, Bates Page 1313.)

<sup>70</sup> The claimants’ uniform allowance sections are entitled either “Uniform Cost Allowance Reimbursement” or “Uniform Time Allowance Reimbursement.” These section are listed on pages 5-10 of the claimants’ January 11, 1999, Proposed Parameters and Guidelines. (Volume II, Bates Pages 241-246.)

<sup>71</sup> Department of Finance Response to Claimants’ Proposed Parameters and Guidelines, page 10, dated April 23, 1999. (Volume II, Bates Page 274.)

“It be given a fair and meaningful opportunity to present evidence and arguments regarding the propriety of employing uniform cost and time allowances for reimbursement at all – and the proper measure thereof if employed – as well as an opportunity to review and comment upon any evidence and/or arguments Claimants may have if, in fact, the Commission is considering using such uniform measures in this context.”<sup>72</sup>

DOF further summarizes its position as follows:

“The Department absolutely opposes the use of uniform cost and time allowances for reimbursement. It is essential that state funds be reimbursed for actual documented costs, versus assumed costs. . . . Therefore, it is necessary to have actual documentation presented for all costs specifically incurred in association with providing the eight state-mandated aspects of Special Education. . . . The Department’s proposed P’s & G’s include a section entitled ‘Reimbursement Computation,’ as a substitute for Claimant’s uniform time/cost allowance reimbursement calculations. Appropriately, the Department’s version also strikes out any language proposed by Claimants regarding statistics, estimates, or taking ‘averages’ of possible reimbursements.”<sup>73</sup>

#### **Interested Party Comments to Claimants’ Inclusion of Uniform Cost Rates**

Mandated Cost Systems, Inc. (MCS) submitted comments to claimants’ Proposed Parameters and Guidelines stating that:

“As a general rule, the clients of MCS support the idea of unit cost/time methodology for the (retroactive) initial deadline for this program (1980/81 through 1998/99). . . . However, in subsequent school years school district [sic] should be allowed the choice of the unit cost method or actual cost method. . . . The reasons for this proposal are as follows: (a) the district should be able to sacrifice reimbursement if they want to save on administrative resources in filing the claims; and (b) to set a rate based on estimates provided via a survey to a small number of school districts does not represent ‘average costs’ let alone actual costs. The proposed rates may not reflect real costs for some claimants.”<sup>74</sup>

The Small School Districts’ Association (SSDA) submitted comments supporting the claimants’ Proposed Parameters and Guidelines. SSDA explains that it:

“Formed a special committee to work with the test claimants and the Education Mandated Cost Network to assist in the development and review of the Special Education parameters and guidelines and statewide cost estimate. The Committee and its staff have reviewed the uniform costs and time allowances contained in the

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<sup>72</sup> *Id.* at 10-11. (Volume II, Bates Pages 274-275.)

<sup>73</sup> *Id.* at 11. (Volume II, Bates Page 275.)

<sup>74</sup> Mandated Cost Systems, Inc., Comments to claimants’ Proposed Parameters and Guidelines, page 5, dated April 22, 1999. (Volume II, Bates Page 255.)

claimant's P's and G's and believe they are a fair and reasonable reflection of the actual costs incurred."<sup>75</sup>

### **Claimants' Rebuttal to Department of Finance's Response**

The claimants, in their Rebuttal to DOF's response to Proposed Parameters and Guidelines, contend "DOF's ignorance of uniform allowances is striking in light of the Commission's regulations on the submission of proposed parameters and guidelines." Claimants note that "DOF's P's & G's, on the other hand, eliminate all use of uniform allowances and require LEAs to produce actual documentation for nineteen years of reimbursable activities." The claimants point out that "State law regarding record-keeping does not require LEAs to maintain such records beyond three years in most cases."<sup>76</sup>

The claimants further "take exception to DOF's allegation that we engaged in improper ex parte communications with Commission staff" and "deny having engaging [sic] in improper discussion with Commission staff regarding uniform allowances or any other subject." Claimants add that "DOF's assault on Claimants' professional ethics (and the Commission's staff!) is unfounded and unprovoked."<sup>77, 78</sup> (Punctuation in original.)

### **Commission Staff's Draft Analysis<sup>79</sup>**

Staff found that including uniform cost rates in the Parameters and Guidelines is consistent with the Commission's statutes and regulations and that the inclusion of DOF's alternative language could significantly increase the costs of the mandate. Staff was unable to determine whether the uniform cost rates proposed by the claimants were reasonable based on the claimants' submittals.

### **Department of Finance's Comments on Draft Staff Analysis**

DOF claims that state mandate statutes speak of reimbursement for only "actual costs."<sup>80</sup> DOF goes on to state that "the existence of these statutes supports the Department's position that any 'reimbursement' in this case should be limited to actual documented costs, and should not be extended to assumed or projected costs."<sup>81</sup> DOF contends that "the Commission is by no means *required* to adopt a uniform rate, and should not adopt one in this case. The potential for large-scale errors, abuse, and prejudice is too great."<sup>82</sup> (Emphasis in original.)

DOF further contends that school districts should have retained documentary proof of costs incurred for state-mandated services.<sup>83</sup> DOF states that "school districts were well aware of the

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<sup>75</sup> Small School District's Association Comments to claimants' Proposed Parameters and Guidelines dated May 24, 1999. (Volume III, Bates Page 529.)

<sup>76</sup> Claimants' Rebuttal to Responses to Proposed Parameters and Guidelines, page 21 dated June 23, 1999. (Volume III, Bates Page 585.)

<sup>77</sup> *Id.* at 21-22. (Volume III, Bates Pages 585-586.)

<sup>78</sup> Staff notes that the claimants modified the uniform cost/time allowances sections in their Amended Parameters and Guidelines to depict more accurately the time necessary to complete certain tasks.

<sup>79</sup> Staff released its Draft Staff Analysis on July 8, 1999. (Volume IV, Bates Page 1167.)

<sup>80</sup> Department of Finance's July 26, 1999, submittal at page 14. (Volume IV, Bates Page 1242.)

<sup>81</sup> *Ibid.*

<sup>82</sup> *Id.* at 15. (Volume IV, Bates Page 1243.)

<sup>83</sup> *Ibid.*

pendency of this Special Education claim and related court litigation, and should have retained records accordingly.”<sup>84</sup> Moreover, DOF contends that “school districts will need to gather records back to 1980 to determine whether they have a reimbursable claim.”<sup>85</sup>

### **Claimants’ Comments on Draft Staff Analysis and Department of Finance’s Comments**

The claimants contend that “while most of the mandates were contained in Chapter 797, Statutes of 1980, there were no fewer than twelve additional bills passed by the Legislature from 1980 to 1994 pertaining to the mandates. (fn. omitted.) How, we ask, can DOF say that school officials should have known about the special education claim and retained all records relevant thereto when DOF admits that the Legislature itself was unaware of the claim?”<sup>86</sup> The claimants submitted an amended version of their Parameters and Guidelines and provided declarations to support their proposed uniform cost rates.

### **Commission Staff’s Final Analysis**<sup>87</sup>

Staff found that including uniform cost rates in the Parameters and Guidelines is consistent with the Commission’s statutes and regulations and that the inclusion of DOF’s alternative language could significantly increase the costs of the mandate. Based on the claimants’ new submittals, staff determined that the uniform cost rates proposed by the claimants were reasonable.

### **Claimants’ Comments on Final Staff Analysis/Parameters and Guidelines**

The claimants, on pages 3-4 of their comments, support staff’s analysis regarding the inclusion of uniform cost rates and urge the Commission’s adoption of **OPTION 1**.<sup>88</sup>

### **Department of Finance’s Comments on Final Staff Analysis**

On page 8 of its August 31, 1999, submittal, DOF reiterates its position that the Commission should use actual costs rather than uniform cost rates. DOF contends that:

“The Commission should require at least one year of documentary proof rather than accepting uniform rates. The Department’s position on documentation is not taken to preclude locals’ valid subvention claims, as claimants insinuate. Requiring actual proof of reimbursement claims constitutes good audit practice as well as good government.”<sup>89</sup>

DOF goes on to state that:

“If the Commission concludes that entitlements to reimbursement in this case are properly determined by rough estimates, then rather than adopting uniform rates based on a few expert declarations, it would be preferable to use actual records by selecting a recent fiscal year for which school districts have retained proper documentation, and using that year as a proxy for a statistical model.”<sup>90</sup>

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<sup>84</sup> *Ibid.*

<sup>85</sup> *Id.* at 16. (Volume IV, Bates Page 1244.)

<sup>86</sup> Claimants’ August 13, 1999, submittal at page 36. (Volume IV, Bates Page 1313.)

<sup>87</sup> Staff released its Final Staff Analysis on August 25, 1999. (Volume IV, Bates Page 1615.)

<sup>88</sup> See claimants’ August 31, 1999, submittal at pages 3-4. (Volume IV, Bates Pages 1695-1696.)

<sup>89</sup> Department of Finance’s August 31, 1999, submittal at page 8. (Volume IV, Bates Page 1712.)

<sup>90</sup> *Id.* at 8-9. Staff addresses DOF argument regarding the use of a statistical model in *Part III – Review of Proposed Parameters and Guidelines*. (Volume IV, Bates Pages 1712-1713.)

## **Staff Analysis**

Government Code section 17557, subdivision (b), allows the Commission to adopt an allocation formula or uniform allowance to provide reimbursement of a specified amount each year. In addition, section 1183.1 of the Commission's regulations states that "whenever possible, an allocation formula or uniform allowance should be used as the basis for reimbursement."

DOF's amendments to the claimants' Proposed Parameters and Guidelines would delete all references to uniform allowances and insert very detailed requirements for claiming costs. DOF asserts that its detailed requirements are necessary because there is a potential for the state to pay out "significant sums of money without requiring actual documentation of costs having been incurred."<sup>91</sup>

Staff disagrees with DOF's deletion of uniform cost rates for three reasons.

First, the Commission's statutes and regulations allow, and indeed, encourage the Commission's use of uniform allowances. Government Code section 17557, subdivision (b), uses the phrase "may adopt" uniform allowances, while the regulations state that uniform allowances should be used *whenever possible*. Contrary to DOF's assertion, claimants *may*, and pursuant to the Commission's regulations, *should* include whenever possible, uniform allowances when submitting their Proposed Parameters and Guidelines.<sup>92</sup> The regulations do not require claimants to obtain the Commission's approval to include uniform allowances in their Proposed Parameters and Guidelines. Accordingly, staff finds that the Commission's statutes and regulations encourage, whenever possible, the use of allocation formulas or uniform allowances as the basis for reimbursement.

Second, most, if not all, claimants would be unable to produce specific documentation for fiscal years 1980-81 through 1996-97. The claimants contend that, under the Department of Education's regulations, school districts are *not* required to keep such detailed documentation for more than three years in most circumstances. The claimants state: "The retention and destruction of school districts records is governed by the provisions of Title 5, section 16020, et. seq., California Code of Regulations. . . . Under these regulations, the district superintendent must review documents and papers originating during the prior school year and classify them in one of three categories: Class 1, Class 2, or Class 3."<sup>93</sup> The claimants contend that "most documents relevant to this test claim are Class 3, records, subject to destruction within 3 years of the year of

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<sup>91</sup> Department of Finance's Response to claimants' Proposed Parameters and Guidelines, page 11. (Volume II, Bates Page 275.) The claimants dispute DOF's concerns on pages 37-39 of their August 13, 1999, submittal. There, the claimants state "DOF's malignment of the honesty and integrity of California's school board members and school officials cannot go unnoticed and unchallenged. DOF has not offered one fact to support its insinuations that school officials might submit fraudulent claims on behalf of publicly elected school boards if uniform allowances are adopted." (Volume IV, Bates Pages 1314-1316.)

<sup>92</sup> Staff does not assert that the Commission is *required* to adopt uniform cost rates as DOF alleges on page 16 of its July 26, 1999, submittal. (Volume II, Bates Page 280.) Rather, staff points out that the implementation of uniform cost rates is *encouraged* under the Commission's statutes and regulations.

<sup>93</sup> Claimants' Rebuttal to Responses to Proposed Parameters and Guidelines, page 23. (Volume III, Bates Page 587.)

origin.”<sup>94</sup> However, the regulations allow school districts to determine whether certain records are worthy of preservation and therefore, should be retained.

Staff agrees with DOF’s contention that “school districts were well aware of the pendency of this Special Education claim and related court litigation, and should have retained records accordingly.” However, the discretionary activity of determining what records are worthy of retention does not become mandatory simply because there is a pending test claim and accompanied litigation. While school districts *should* have retained such documentation, state law did not, and does not, require them to do so. It is staff’s position that the fact that school districts did not retain such records does not preclude the Commission from adopting uniform cost rates for any or all of the eight program areas.

Therefore, staff finds that DOF’s proposal to delete uniform cost rates and require specific documentation, which most school districts would not retain in the normal course of business pursuant to state law, would prevent most claimants from being reimbursed for costs mandated by the state.

Third, DOF’s alternative language requiring specific documentation is unnecessarily burdensome and costly. DOF strikes out all of the uniform cost allowance sections from the claimants’ Proposed Parameters and Guidelines and replaces them with two new sections – Eligibility Requirements and Reimbursement Computations.<sup>95</sup> The Eligibility Requirements section requires school districts to provide specified information in order to be eligible for reimbursement. The Reimbursement Computations section includes detailed instructions on how costs are to be computed and claimed. Staff finds inclusion of DOF’s proposed sections would expand the activities required by school districts filing reimbursement claims. In some instances, the costs of complying with DOF’s new sections could significantly increase the costs of the program itself.<sup>96</sup>

DOF’s concerns regarding the reasonableness of the claimants’ proposed uniform cost rates is unfounded. The claimants’ proposed uniform cost rates are supported by declarations. These declarations have the full support of eligible claimants from large to small SELPAs and school

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<sup>94</sup> Class 1 – permanent records must be retained indefinitely. These are permanent records of the school district and include annual reports, official actions, personnel records (employee and pupil), and property records. (Cal. Code Regs., tit. 5, § 16023.) Class 2 – optional records are those records the superintendent and the governing board determine are “worthy of further preservation, but are not classified as Class 1 – permanent.” These records must be maintained until they are reclassified as Class 3 – disposable. (Cal. Code Regs., tit. 5, § 16024.) Class 3 records are disposable records not classified as either Class 1 – permanent or Class 2 – optional records. These records are not to be destroyed until after the third July 1st succeeding the completion of the audit required by Education Code section 41020 or other required retention period, whichever is later. (Cal. Code Regs., tit. 5, § 16025.) *Id.* at 23-25. (Volume III, Bates Pages 587-589.)

<sup>95</sup> See Department of Finance Proposed Parameters and Guidelines, pages 6-13, 15-24. (Volume II, Bates Pages 502-509, 511-520.)

<sup>96</sup> For example, for the Community Advisory Committee (CAC) program area, DOF would hinge reimbursement eligibility on school districts’ ability to prove that, but-for the state law, teachers and administrators would have played no role or participated in the CAC and those who did participate were in fact compensated by the district. After being able to meet the two requirements above, school districts would then compute reimbursement based on an extensive review of documentation most districts would not keep in the normal course of business, or if they did, the documents are not kept for longer than three years. (See Department of Finance Proposed Parameters and Guidelines, pages 8-11.) (Volume II, Bates Pages 504-507.) Staff notes that no such provisions have been included in past Parameters and Guidelines.



districts. Dr. Miller's declaration states that the claimants' Proposed Parameters and Guidelines were reviewed by the State SELPA Directors organization, which includes all 116 SELPA Directors in California. The Small School Districts Association, which represents over 600 school districts with fewer than 2500 students in California, found the uniform cost rates to be fair and reasonable. In addition, the claimants submitted declarations from other school districts of varying size and special education pupil count, each of which supported the claimants' proposed uniform cost rates.

Accordingly, staff finds that including uniform cost rates in the Parameters and Guidelines is consistent with the Commission's statutes and regulations. In addition, while DOF's proposal would provide a more accurate representation of the actual costs school districts incurred when compared to using uniform cost rates, this proposal would dramatically increase school districts' reimbursement claims under the Mandate Reimbursement Process.

### **Commission Findings**

Based on the arguments presented above, the Commission may adopt one of the following findings concerning the application of uniform cost rates:

**OPTION 1:** The Commission finds that the use of Uniform Cost Rates in the Special Education Parameters and Guidelines is consistent with the Commission's statutes and regulations.

If the Commission adopts **OPTION 1**, the Commission must determine if the Uniform Time/Cost Allowances in staff's or the claimants' Proposed Parameters and Guidelines are reasonable and should be adopted as proposed or modified, in whole or in part.<sup>97</sup> These determinations may be made at the September 15, 1999, hearing, or continued to the September 30, 1999, hearing. After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission.

**OPTION 2:** The Commission finds that Uniform Cost Rates do not provide the level of detail necessary to ensure that the state is paying the proper amount for the eight program areas. Therefore, this claim requires the use of actual documentation and striking of all references to averages, uniform allowances, and time studies from the Special Education Parameters and Guidelines.

If the Commission adopts **OPTION 2**, the Commission must decide which version to adopt as proposed or modified, in whole or in part. These determinations may be made at the September 15, 1999, hearing, or continued to the September 30, 1999, hearing. After making these determinations, staff would prepare a revised version of the Proposed Parameters and Guidelines to present for adoption by the Commission.

### **Staff Recommendation**

Staff recommends that the Commission adopt **OPTION 1**.

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<sup>97</sup> The uniform cost rates in staff's Proposed Parameters and Guidelines are almost identical to those proposed by the claimants. Staff analyzes each section of staff's Proposed Parameters and Guidelines in *Part III – Review of Proposed Parameters and Guidelines*.



## **PART III – REVIEW OF PROPOSED PARAMETERS AND GUIDELINES**

Over the course of the Parameters and Guidelines phase of this test claim, several versions of Proposed Parameters and Guidelines have been submitted to and/or released by staff. The following list describes these documents:

- Claimants' original Proposed Parameters and Guidelines includes uniform cost rates.
- DOF's Amended Proposed Parameters and Guidelines strikes all mention of uniform cost rates, time studies, averages, and estimates from the claimants' version. DOF inserts the actual cost requirement.
- Claimant's Amended Proposed Parameters and Guidelines includes offset language and uniform cost rates.
- Claimants' Amended Proposed Parameters and Guidelines as Modified by Staff includes minor modifications to text, uniform cost rates remain unchanged.
- Claimants' Amended Proposed Parameters and Guidelines as Modified by Staff and Further Modified by Claimants includes offsets and modified uniform cost rates (Claimants' Last Submittal)
- Staff's Draft Proposed Parameters and Guidelines includes offsets and uniform cost rates.

The following section describes the different Proposed Parameters and Guidelines the Commission may adopt based on the Commission's decision regarding uniform cost rates.

If the Commission finds that the inclusion of uniform cost rates is consistent with the Commission's statutes and regulations, then the Commission may adopt either staff's Proposed Parameters and Guidelines (**Exhibit A**), the Claimants' Last Submittal (**Exhibit B**), or a modified version of the Proposed Parameters and Guidelines to be developed at the hearing.

If the Commission finds that uniform cost rates do not provide the level of detail necessary to ensure that the state is paying the proper amount for the eight program areas, then the Commission may adopt the Claimants' Last Submittal without uniform cost rates (**Exhibit C**), DOF's version of the Claimants' Proposed Parameters and Guidelines (**Exhibit D**), or a version of the Proposed Parameters and Guidelines to be developed at the hearing.

### **Uniform Cost Rates Included (Staff's Proposed Parameters and Guidelines – Exhibit A; Claimants' Last Submittal – Exhibit B)**

The following analysis addresses the differences between staff's and the claimants' Proposed Parameters and Guidelines. Staff made several changes to the layout and text of the Claimants' Proposed Parameters and Guidelines in staff's final version. This analysis does not address the staff's modifications claimants accepted and incorporated into their last submittal. The main difference between staff's and the claimants' Proposed Parameters and Guidelines is staff's proposal allows eligible claimants to file reimbursement claims from 1980 through the present based on uniform cost rates *or* actual costs with appropriate supporting documentation.

### **Section I. Commission on State Mandates Decision and Summary of the Mandate**

Staff made clarifying edits to subdivision E. Resource Specialist Program (excluding maximum caseloads) as suggested by the claimants in their August 13, 1999, submittal.

## Section II. Eligible Claimants

Staff modified the list of eligible claimants to match the description of eligible claimants found in Section IV. Reimbursable Components as suggested by the claimants in their August 13, 1999, submittal.

## Section IV. Reimbursable Components

Staff modified the first paragraph to conform with Section VII. Claim Preparation, B. Supporting Documentation. Staff re-ordered the sections, placing all of the program areas with offsets first (subdivisions a-e).

### **A. Community Advisory Committees.**

Staff did not make any changes to sections 1-5.

The claimants submitted declarations from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area, Kerri Mills, Ed.D., Special Education Director for Mill Valley School District, and Johnny Welton, SELPA Director for Contra Costa SELPA regarding the reasonableness of the uniform cost rates included for the Community Advisory Committees program area. The declarations state that the uniform cost rates are reasonable based on their experience in the special education field.

DOF contends that, should the Commission decide to use uniform cost rates, the rates should be based on a statistical model and not on “a few expert declarations.” Staff finds that the development of a statistical model is unnecessary for two reasons.

First, the declarations submitted by the claimants have the full support of eligible claimants from large to small SELPAs and school districts. Dr. Miller’s declaration states that the claimants’ Proposed Parameters and Guidelines were reviewed by the State SELPA Directors organization, which includes all 116 SELPA Directors in California. The Small School Districts Association, which represents over 600 school districts with fewer than 2500 students in California, found the uniform cost rates to be fair and reasonable. In addition, the claimants submitted declarations from other school districts of varying size and special education pupil count, each of which supported the claimants’ proposed uniform cost rates. Therefore, staff finds that the claimants’ proposed uniform cost rates are supported by more than “a few expert declarations” as DOF contends. Rather, the uniform cost rates have the support of the vast majority of SELPAs and school districts in California.

Second, the development of a statistical model would only serve to delay these proceedings further. Because the declarations submitted by the claimants have such wide ranging support, staff finds it unnecessary to develop a statistical model upon which to base the uniform cost rates. Staff notes that the preceding discussion of the claimants’ proposed uniform cost rates applies to each of the following program areas.

Based on the declarations submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

Staff renamed the second restriction box “Offset.”

### **B. Governance Structure.**

Staff made non-substantive/technical changes to sections 1-3.

The claimants submitted declarations from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area and Kerri Mills, Ed.D., Special Education

Director for Mill Valley School District regarding the reasonableness of the uniform cost rates included for the Governance Structure program area. The declarations state that the uniform cost rates are reasonable based on their experience in the special education field.

Based on the declarations submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

Staff renamed the second restriction box "Offset."

### **C. Enrollment Caseloads.**

No changes to sections 1-2.

Staff modified the uniform cost rate for travel and expenses in preparation for the waiver. The claimants submitted a uniform cost rate of \$300. Staff finds that, although this figure is supported by Caryl Miller's declaration, SELPAs closer to Sacramento would not incur the same costs for travel/preparation. Therefore, staff modified the uniform cost rate to an amount based on distance traveled. Government Code sections 500-559 provide the legal distances for all of the county seats in California to Sacramento. Section 534 provides; "the county seat of Riverside County to Sacramento is five hundred and twelve (512) miles." Staff divided the claimants \$300 uniform rate by 512 miles, which equals .5859 cents. Staff rounded the figure to \$0.60 per mile for transportation/preparation for the waiver subject to the Implicit Price Deflator.

The claimants submitted a declaration from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area regarding the reasonableness of the uniform cost rates included for the Enrollment Caseloads program area. The declaration states that the uniform cost rates are reasonable based on Dr. Miller's experience in the special education field.

Based on the declaration submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

Staff renamed the restriction box "Offset."

### **D. Extended School Year.**

Staff renamed the restriction box "Offset."

### **E. Resource Specialist Program (excluding maximum caseloads).**

No changes to sections 1-3.

Staff modified the uniform cost rate for travel and expenses in preparation for the waiver. The claimants submitted a uniform cost rate of \$300. Staff finds that, although this figure is supported by Caryl Miller's declaration, SELPAs closer to Sacramento would not incur the same costs for travel/preparation. Therefore, staff modified the uniform cost rate to an amount based on distance traveled. Government Code sections 500-559 provide the legal distances for all of the county seats in California to Sacramento. Section 534 provides; "the county seat of Riverside County to Sacramento is five hundred and twelve (512) miles." Staff divided the claimants \$300 uniform rate by 512 miles, which equals .5859 cents. Staff rounded the figure to \$0.60 per mile for transportation/preparation for the waiver subject to the Implicit Price Deflator.

The claimants submitted declarations from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area and Paul M. Goldfinger, Vice President of School Services of California, Inc. regarding the reasonableness of the uniform cost rates

included for the Resource Specialist program area. The declarations state that the uniform cost rates are reasonable based on their experience in the special education field.

Based on the declarations submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

#### **F. Maximum Age Limit – Age 22.**

Staff made non-substantive/technical changes to Section 1. Eligibility Periods to conform with the Statement of Decision, statutes, and the claimants August 13, 1999, submittal.

The claimants submitted a declaration from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area regarding the reasonableness of the uniform cost rates included for the Maximum Age Limit program area. The declaration states that the uniform cost rates are reasonable based on Dr. Miller's experience in the special education field.

Based on the declaration submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

#### **G. Interim Placements.**

Staff made changes to section 1 of the claimants' Proposed Parameters and Guidelines to conform the language to the Statement of Decision and statutes.

Staff deleted section 2 of the claimants' Proposed Parameters and Guidelines because the activity was not included in the Staff Analysis or Statement of Decision.

The claimants submitted declarations from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area and Kerri Mills, Ed.D., Special Education Director for Mill Valley School District regarding the reasonableness of the uniform cost rates included for the Interim Placement program area. The declarations state that the uniform cost rates are reasonable based on their experience in the special education field.

Based on the declarations submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

#### **H. Written Consent.**

In Staff's Draft Proposed Parameters and Guidelines, staff modified sections 6-9 to include time and expenses for *employees, attorneys, or contractors* (the claimants proposed this modification). Staff has further modified sections 6-9 to delete the reference to attorneys in staff's Final version because attorneys may be employees or contractors. Furthermore, the inclusion of the term attorney may lead school districts to believe that they must use attorneys for the activities listed in sections 6-9.

The claimants submitted declarations from Caryl J. Miller, Ed.D., Executive Director of the Riverside County Special Education Local Plan Area, Kerri Mills, Ed.D., Special Education Director for Mill Valley School District, and Irving G. Rollins, Ed.D., Assistant Superintendent, Student Services at Palo Alto Unified School District regarding the reasonableness of the uniform cost rates included for the Written Consent program area. The declarations state that the uniform cost rates are reasonable based on their experience in the special education field.

Based on the declarations submitted by the claimants on August 13, 1999, staff finds the proposed uniform cost rates to be reasonable.

#### Section V. Special Education Costs

Staff made clarifying/technical changes to this section.

#### Section VI. Use Of Uniform Time/Cost Allowance or Actual Costs

Staff added this section to clarify that eligible claimants may file claims based on either uniform cost rates or actual costs.

#### Section VII. Claim Preparation

Staff deleted language from B. Supporting Documentation, 1. Employee Salaries and Benefits relating to averages and time studies. Staff finds this language unnecessary because claimants may file reimbursement claims based on uniform time/cost allowances.

#### Section XI. Parameters and Guidelines Amendments

To address DOF's concerns regarding the previously included section entitled Unique Costs/Time, staff has revised this section to strike references to unique costs/time and restate the law as detailed in the Commission's regulations.

#### Note Regarding Direct/Indirect Costs

Staff's Parameters and Guidelines do not provide that the uniform cost rates cover both direct and indirect costs. DOF contends that "the purpose of adopting a uniform rate is to average out the varying costs that are related to providing state-mandated components of the Special Education programs. The Department does not understand why any such uniform rate would not serve as the rate in lieu of *actual costs*, which would cover both direct and indirect costs."<sup>98</sup> (Emphasis in original.) Staff notes that past Parameters and Guidelines have not included direct and indirect cost language and therefore, staff does not include them in its version.

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<sup>98</sup> See Department of Finance's August 31, 1999, submittal at 9. (Volume IV, Bates Page 1713.)



### **Uniform Cost Rates Not Included (Exhibits C, D)**

Staff does not engage in a section-by-section analysis of the **Exhibits C** and **D** versions of the Proposed Parameters and Guidelines.

### **Claimants' Last Submittal (modified) – Exhibit C**

The Claimants Proposed Parameters and Guidelines as submitted on August 13, 1999, are modified to strike all references to unit cost rates, time studies, and averages. Claimants would need to support all claims for reimbursement with actual costs and data for all years back to 1980.

### **DOF's Proposed Parameters and Guidelines – Exhibit D**

DOF deleted all references to uniform allowances, time studies, and averages from each of the eight program areas. DOF includes two new sections – Eligibility Requirements and Reimbursement Computations.<sup>99</sup> The Eligibility Requirements section requires school districts to provide specified information in order to be eligible for reimbursement. The Reimbursement Computations section includes detailed instructions on how costs are to be computed and claimed.

### **Staff Recommendation for Parameters and Guidelines With Uniform Cost Rates**

If the Commission finds that the inclusion of uniform cost rates in the Parameters and Guidelines is consistent with the Commission's statutes and regulations and the rates included are reasonable, then staff recommends the Commission adopt **Staff's Proposed Parameters and Guidelines – Exhibit A**.

### **Staff Recommendation for Parameters and Guidelines Without Uniform Cost Rates**

If the Commission finds that uniform cost rates do not provide the level of detail necessary to ensure that the state is paying the proper amount for the eight program areas, then staff recommends the Commission adopt **Claimants Last Submittal (Modified) – Exhibit C**.

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<sup>99</sup> See Department of Finance Proposed Parameters and Guidelines, pages 6-13, 15-24. (Volume II, Bates Pages 502-509, 511-520.)